

REMARKS

Claims 1 – 19 and 22 – 46 are currently pending with Claims 7 – 18 and 22 – 29 having been withdrawn from consideration and Claims 1 – 6, 19, and 30 – 42 having been examined on the merits. New independent Claim 43 is added along with associated dependent Claims 44-46. No new matter is added by any of the amendments. Claims 1 and 43 are the only pending independent claims.

In the Office Action, Claims 1 – 6, 19, and 30 – 42 were rejected as allegedly obvious over US Patent No. 7,163,693 to Clarke et al. (Clarke) taken in combination with either US Patent 3,186,910 to Glassman or US Patent Application Publication No. 2001/0036473 to Scott et al. (Scott).

Each of the foregoing rejections is respectfully traversed. Favorable reconsideration is requested in view of the above amendments and following remarks.

As amended herein, Claim 1 is directed to a modified release pharmaceutical composition comprising a capsule which includes, among other things, a capsule cap and a coated capsule body. The capsule cap assembles with the body so as to encapsulate a tablet and a granulate therein together with trapped gas. Because the capsule body exhibits no or only limited solubility in acidic aqueous medium, it maintains its integrity so as to float or at least remain buoyant in the acidic aqueous medium for at least about an hour. New Claim 43 is directed to a capsule for release of contents into the upper gastrointestinal tract wherein an assembled capsule cap and capsule body sealably encapsulate at least one tablet, granulate, and an amount of a gaseous material to substantially isolate the assembled capsule and its contents from an environment surrounding the assembled capsule. At least part of the assembled capsule is substantially insoluble in an acidic aqueous medium, such as gastric or stomach fluids, and another part is at least slowly soluble in the medium. As a result, the capsule floats on or adjacent the surface of the aqueous medium, such as in the fluid contained in a stomach, for at least about an hour for controlled release of material from inside the capsule into the stomach fluid while the capsule is still floating or at least buoyant in the fluid and in the upper GI tract.

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The features of Applicants' claims are novel and nonobvious over the known art. They are not disclosed or suggested by any of the three cited references. Neither Clarke, nor Glassman, nor Scott says anything about a capsule designed and assembled according to Applicants' claims and sufficiently buoyant to float within gastric fluids or similar acidic aqueous liquids, but still able to release its contents into the upper GI tract.

Accordingly, independent Claims 1 or 43 cannot fairly be said to be obvious in view of the purported combination of the Clarke, Glassman, and Scott references. Likewise, dependent Claims 2-6, 19, 30-42, and 44-46, which include all of the limitations of independent Claims 1 or 43, cannot be said to be obvious in view of the purported combination of the Clarke, Glassman, and Scott references.

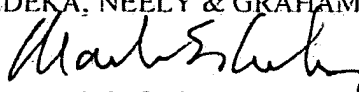
In light of the foregoing, Applicants urge the Examiner to reconsider the application, to withdraw the rejections, and to issue a notice of allowance at the earliest possible convenience.

In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our Deposit Account No. 12-2355.

Respectfully submitted,

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